

Short Title: Partition of Property/Attorneys' Fees.

A BILL TO BE ENTITLED

AN ACT TO PROVIDE **IN PARTITION PROCEEDINGS THAT** THE COURT SHALL  
ALLOCATE PRO RATA AMONG ALL THE **COTENANTS** THOSE REASONABLE  
ATTORNEYS' FEES INCURRED FOR THE COMMON BENEFIT OF ALL THE  
**COTENANTS AND THAT REASONABLE ATTORNEYS' FEES INCURRED BY A**  
**COTENANT IN DISPUTING THE METHOD OF PARTITION [SHALL] [MAY] BE**  
**ALLOCATED BY THE COURT AMONG COTENANTS THAT ARE ALIGNED WITH**  
**THE COTENANT ON THAT ISSUE.**

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 1 of Chapter 46 of the General Statutes is amended by adding  
a new section to read:

**"§ 46-3.3. Attorneys' fees.**

(a) In proceedings to partition property under this Chapter, the court shall allocate among  
all the cotenants of the property those reasonable attorneys' fees incurred for the common benefit  
of all the cotenants, unless a cotenant shows by clear and convincing evidence that doing so  
would be inequitable. The allocation shall be according to each cotenant's interest in the property.

(b) The attorneys' fees described in subsection (a) of this section do not include attorneys'  
fees incurred in disputing which method of partition the court should order. Reasonable attorneys'  
fees incurred by a cotenant in disputing this issue [shall] [may] be allocated by the court among  
cotenants that are aligned with the cotenant on that issue. [The allocation shall be according to  
each aligned cotenant's interest in the property relative to the total interest of all the aligned  
cotenants in the property.]"

*[Staff Note: Subsection (a) previously read: "In partition proceedings initiated under this  
Chapter, the court shall allocate pro rata among all the parties those reasonable attorneys' fees  
incurred for the common benefit of all the parties, unless a party shows by clear and convincing*

*evidence that doing so would be inequitable." Staff changed subsection (a) to use the term "cotenant" instead of "party" and to elaborate on the concept of "pro rata".]*

*[Staff Note: Item (6) of the Partition Task Force report is as follows: "Statutory presumption that attorneys' fees incurred for the common benefit of the heirs should be awarded, with the amounts in the discretion of the clerk. Attorneys' fees incurred specifically to oppose other tenants in common with respect to whether there should be partition in kind or by sale should not be awarded against the party opposing, but only chargeable to the clients of the attorney and those tenants in common aligned in interest with those clients. (Second sentence has pros and cons.)"]*

**SECTION 2.** G.S. 6-21 reads as rewritten:

**"§ 6-21. Costs allowed either party or apportioned in discretion of court.**

Costs in the following matters shall be taxed against either party, or apportioned among the parties, in the discretion of the court:

- (1) Application for years' support, for surviving spouse or children.
- (2) Caveats to wills and any action or proceeding ~~which~~ that may require the construction of any will or trust agreement, or fix the rights and duties of parties ~~thereunder; provided, that in~~ under any will or trust agreement. In any caveat proceeding under this subdivision, the court shall allow attorneys' fees for the attorneys of the caveators only if it finds that the proceeding has substantial merit.
- (3) Habeas corpus; ~~and the~~ corpus. The court shall direct ~~what~~ which officer shall tax the costs ~~thereof~~ of the proceeding.
- (4) In actions for divorce or ~~alimony; and the~~ alimony. The court may both before and after judgment make such order respecting the payment of such costs as may be incurred by either spouse from the sole and separate estate of either spouse, as may be just.
- (5) Application for the establishment, ~~alteration~~ alteration, or discontinuance of a public road, ~~cartway~~ cartway, or ferry. The board of county commissioners

~~may order the costs incurred before them paid in their discretion in its~~  
discretion may assess the costs incurred before the board.

(6) The compensation of referees and commissioners to take depositions.

(7) ~~All~~ Subject to G.S. 46-3.3, all costs and expenses incurred in special  
proceedings for the division or sale of either real estate or personal property  
~~under the Chapter entitled Partition.~~ partition of real or personal property under  
Chapter 46 of the General Statutes.

(8) In all proceedings under ~~the Chapter entitled Drainage,~~ Chapter 156 of the  
General Statutes relating to drainage, except as ~~therein~~ otherwise  
~~provided.~~ provided in that Chapter.

(9) In proceedings for reallocation of homestead for increase in value, as provided  
in the Chapter, Civil Procedure.

(10) In proceedings under Article 3 of Chapter 49 of the General Statutes regarding  
children born out of wedlock.

(11) In custody proceedings under Chapter 50A of the General Statutes.

(12) In actions brought for misappropriation of a trade secret under Article 24 of  
Chapter 66 of the General Statutes.

The word "costs" as ~~the same appears and is used in this section shall be construed to include~~  
includes reasonable attorneys' fees in such amounts as the court shall in its discretion determine  
and ~~allow: provided that attorneys' allow.~~ Attorneys' fees in actions for alimony alimony,  
however, shall not be included in the costs as provided ~~herein,~~ in this section but shall be  
determined and provided for in accordance with G.S. 50-16.4."

*[Staff Note: Regarding G.S. 6-21(9), Session Laws 1981, c. 490, as amended by Session Laws  
1981, c. 1001, repealed the homestead provisions in Chapter 1 of the General Statutes, including  
G.S. 1-373, which governed the procedure to reallocate a homestead due to an increase in value.  
The session law replaced the homestead laws with the exemption laws in Article 16 of Chapter  
1C of the General Statutes but did not include a comparable successor provision to G.S. 1-373.  
Although G.S. 1C-1603(g) provides that an exemption may be modified due to a substantial*

1 *change in value, this modification is by motion in the original exemption proceeding. Staff is*  
2 *consulting with the Administrative Office of the Courts to determine if G.S. 6-21(9) should be*  
3 *repealed.]*

4  
5 **SECTION 3.** G.S. 46-2.1 reads as rewritten:

6 **"§ 46-2.1. ~~Summons.~~Summons; notice included in petition.**

7 (a) In partition proceedings initiated under this Chapter, the period of time for answering  
8 a summons is provided in G.S. 1-394.

9 (b) Written notice shall be included in the petition in a manner reasonably calculated to  
10 make the respondent aware of the following:

11 (1) That the respondent has the right to seek the advice of an attorney and that  
12 free legal services may be available to the respondent by contacting Legal Aid  
13 of North Carolina or other legal services organizations.

14 (2) That pursuant to ~~G.S. 6-21 the court has the authority, in its discretion, to order~~  
15 ~~reasonable attorneys' fees to be paid as a part of the costs of the~~  
16 ~~proceeding.~~ G.S. 46-3.3(a), the court shall allocate pro rata among all the  
17 cotenants those reasonable attorneys' fees incurred for the common benefit of  
18 all the cotenants.

19 (3) That pursuant to G.S. 46-3.3(b), reasonable attorneys' fees incurred by a  
20 cotenant in disputing the method of partition [shall] [may] be allocated by the  
21 court among cotenants that are aligned with the cotenant on that issue."

22 **SECTION 4.** G.S. 46-27 reads as rewritten:

23 **"§ 46-27. ~~Sale of land~~real property required for public use on cotenant's petition.**

24 When the ~~lands~~ real property of ~~joint tenants or tenants in common or joint tenants~~ are ~~is~~  
25 required for public purposes, one or more ~~of such tenants, or their guardian for them,~~ cotenants,  
26 or the cotenant's guardian, may file a petition verified by ~~oath,~~ oath in the superior court of the  
27 county where the ~~lands or any part of them lie,~~ property or any part of the property is located,

1 setting forth ~~therein~~ in the petition that the ~~lands are~~ property is required for public purposes, and  
2 that ~~their~~ the cotenants' interests would be promoted by a sale ~~thereof~~ of the property. Whereupon  
3 the court, all proper parties being before it, and the facts alleged in the petition being ascertained  
4 to be true, shall order a sale of ~~such lands,~~ the property, or so much ~~thereof~~ of the property as  
5 may be necessary. ~~The~~ Subject to G.S. 46-3.3, expenses, ~~fees~~ fees, and costs of this proceeding  
6 shall be ~~paid~~ assessed in the discretion of the court. Mediator fees and costs of mediation shall  
7 be assessed in accordance with G.S. 7A-38.3B."

8 **SECTION 5.** This act becomes effective [October 1, 2019], and applies to partition  
9 proceedings commenced on or after that date.